



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

McDonnell Boehnen Hulbert & Berghoff
300 Sout Wacker Drive
Chicago, Illinois 60606

COPY MAILED

MAR 03 2006

OFFICE OF PETITIONS

In re Application of
Rodgers et al.
Application No. 09/772,819
Filed: January 30, 2001
Atty Docket No. 3008

:
:
: LETTER REGARDING
: PATENT TERM ADJUSTMENT
:

This is in response to "Applicant's Comment on Patent Term Adjustment calculation and filing of terminal disclaimer" filed July 15, 2005, pursuant to applicants' duty of candor and good faith to the Office. Applicants disclose that a terminal disclaimer was submitted in this application. Applicants disclose that because of the submission of the terminal disclaimer, the patent issued on this application is not entitled to any patent term adjustment.

The request for correction of the patent term adjustment (PTA) is **DISMISSED**.

Applicants are given **thirty (30) days** from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

35 U.S.C. 154(b)(2)(B) provides that:

No patent the term of which has been disclaimed beyond a specified date may be adjusted under this section beyond the expiration date specified in the disclaimer.

37 CFR § 1.703(g) provides that:

No patent, the term of which has been disclaimed beyond a specified date, shall be adjusted under § 1.702 and this section beyond the expiration date specified in the disclaimer.

The provisions of § 154(b), for adjustment due to examination delay, apply to original applications¹, other than designs, filed

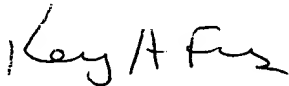
on or after May 29, 2000. The Office calculates patent term adjustment for examination delay in all eligible applications. In calculating the patent term adjustment, the Office does not differentiate between applications that have terminal disclaimers and those that do not. Nor does the Office undertake the burdensome task of reviewing every application with a terminal disclaimer to determine if the patent term adjustment accorded would adjust the term beyond the expiration date specified in the disclaimer.

Rather, on issuance of the application, in compliance with 35 U.S.C. 154(b) and 37 CFR § 1.703(g), it is indicated in the patent that the patent term adjustment indicated therein is subject to any disclaimer. Moreover, it is also stated therein that the patent is subject to a terminal disclaimer.

As this letter was submitted as an advisement to the Office of an error in Applicants' favor, the Office will not assess the \$200.00 application fee under 37 CFR 1.705(b). The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

The application is being forwarded to the Office of Patent Publication for timely issuance of the application.

Telephone inquiries specific to this matter should be directed to Kery Fries, Senior Petitions Attorney, at (571) 272-7757.



Kery Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy